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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OUR CHILDREN'S EARTH
FOUNDATION, a non-profit corporation,

Plaintiff,

v.

ANDREW R. WHEELER, in his official
capacity as the Administrator of the United
States Environmental Protection Agency,

Defendant.

Case No. 3:19-cv-07125-WHA

**JOINT MOTION AND [PROPOSED]
ORDER TO ENTER CONSENT DECREE**

Action filed: October 29, 2019

1 Defendant Andrew R. Wheeler, in his official capacity as the Administrator of the
2 United States Environmental Protection Agency (“EPA”) and Plaintiff Our Children’s Earth
3 Foundation (“OCE”) (collectively “Parties”) jointly move to enter the attached proposed
4 Consent Decree, Ex. 1. In support of this motion, the Parties state as follows:

5 1. OCE’s Complaint (Dkt. No. 1) in this action was filed pursuant to section 304
6 of the Clean Air Act (“CAA”), 42 U.S.C. § 7604, alleging that under the CAA and its
7 regulations, EPA is required to review and revise certain emissions standards for new sources
8 under the New Source Performance Standards (“NSPSs”), and for listed sources under the
9 National Emission Standards for Hazardous Air Pollutants (“NESHAPs”), every eight years.
10 See 42 U.S.C. § 7411(b)(1)(B), 42 U.S.C. § 7412(d)(6). OCE further contends that in light of
11 these requirements, EPA has missed the statutory deadlines to complete one or more of the
12 required regulatory duties for seven (7) categories of sources of air emissions. Dkt. 1 ¶ 1.

13 2. In Claim 1, OCE alleges that EPA violated CAA section 111(b)(1)(B), 42
14 U.S.C. § 7611(b)(1)(B), by failing to review and either revise or determine not to revise NSPSs
15 for four categories: (1) Industrial Surface Coating: Surface Coating of Plastic Parts for
16 Business Machines, (2) Automobile and Light Duty Truck Surface Coating Operations, (3)
17 Lead-Acid Battery Manufacturing Plants, and (4) Secondary Lead Smelters. Dkt. 1 ¶¶ 2, 86.

18 3. In Claim 2, OCE alleges that EPA violated CAA section 112(d)(6), 42 U.S.C. §
19 7612(d)(6), by failing to review and either revise or determine not to revise NESHAPs for
20 three categories: (1) Paint Stripping and Miscellaneous Surface Coating Operations at Area
21 Sources, (2) Lead Acid Battery Manufacturing Area Sources, and (3) Dry Cleaning Facilities:
22 National Perchloroethylene Air Emission Standards. Dkt. 1 ¶¶ 3, 89.

23 4. The Parties have resolved all claims by the proposed Consent Decree, which is
24 attached hereto as Exhibit 1.

25 5. The proposed Consent Decree sets reasonable deadlines for EPA to review
26 emissions standards for all seven categories included in the Complaint and for EPA to make a
27 final decision on these standards. Ex. 1 ¶¶ 2-8.

6. Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), requires EPA to provide “a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing” upon the proposed Consent Decree. The proposed Consent Decree was noticed in the Federal Register on July 24, 2020. *Notice*, 85 Fed. Reg. 44,888 (July 24, 2020). The notice and comment process is now complete. EPA received one comment that did not advocate for withholding consent and did not disclose information that would indicate that EPA should withhold consent. See Ex. 2, Comments on Proposed Consent Decree.

7. Through the proposed Consent Decree, EPA and OCE indicate their agreement that the Consent Decree is fair, reasonable, and in the public interest.

8. The Parties now jointly request that the Court enter the proposed Consent Decree.

Dated: October 14, 2020

Respectfully Submitted,

/s/ Hubert T. Lee

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E-FILING ATTESTATION

Pursuant to Civil Local Rule 5.1(i)(3), I attest that counsel for Plaintiff has concurred in the filing of this document.

s/ Hubert T. Lee
Hubert T. Lee
Counsel for Defendant